

MSHA has interpreted the term "permanent pump" to mean a pump that is expected to remain in place for a relatively long or indefinite period of time. This definition is contained in the MSHA Underground Manual quoted above. The Manual has been in effect since its publication in March 1978.

Respondent contends that use of the term "permanent pump" in the standard is unconstitutionally vague and overbroad. In order to be constitutional, a standard must not be "so incomplete, vague, indefinite or uncertain that men of common intelligence must necessarily guess at its meaning and differ as to its application." Connolly v. Gerald Constr. Co., 269 U.S. 385, 391 (1926). Rather, "Laws [must] give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 109 (1972).

A standard is not unenforceably vague if a reasonably prudent person familiar with the mining industry and protective purposes of the standard would recognize the hazardous condition which the standard seeks to prevent. Secretary v. Ozark-Mahoning Co., 3 FMSHRC 2117, 2118 (1986); Secretary v. U.S. Steel, 3 FMSHRC 1550, 1533 (1984). "Broadness is not always a fatal defect in a safety and health standard." Secretary v. Alabama By-Products Corp., 2 FMSHRC 1918, 1920 (1982). Many standards must be drafted in general terms "to be broadly adaptable to myriad circumstances" in a mine. Secretary v. Kerr-McGee Corp., 2 FMSHRC 1492, 1493 (1981).

In two cases involving a safety belt standard, the Commission rejected the operators' arguments that 30 C.F.R. § 55.15-5 was unconstitutionally vague and ambiguous. Secretary v. U.S. Steel, 3 FMSHRC 1550 (1984); Secretary v. Great Western Electric, 2 FMSHRC 2121 (1983). That standard requires that safety belts and lines be worn by miners where there is a "danger of falling." The operators objected on the grounds that the standard's phrase "danger of falling" was too vague and ambiguous to enable an operator to define all situations where belts and lines must be worn. The Commission ruled, however, that application of a broad standard to particular factual situations did not offend due process. Sufficient clarity may be provided if an alleged violation is judged by a test of what actions would have been taken under the same or similar circumstances by a